

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 187 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJART

Versus

JAYANTIBHAI NARSINHBHAI PATEL

Appearance:

1. Criminal Appeal No. 187 of 1993
Mr M A Bukhari, APP for Petitioner No. 1
MR LM CHHABLANI for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 14/12/2001

ORAL JUDGEMENT

This is an appeal under section 378 of Criminal Procedure Code, 1973 (for short, 'the Code') against the judgment and acquittal order dated 8.10.1992 recorded by the learned Addl.Sessions Judge as learned Special Judge

of the Special Court and Sessions Court of the Sessions Division of Sabarkantha at Himatnagar in Special Case No.5/92, under which the learned Judge found that the prosecution had failed to prove the offence against the present respondents and, therefore, the learned Judge acquitted the present respondent from the offences punishable under sections 342, 343, 504 and 506(2) of IPC as well as under section 3(1)(6) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The facts leading to the aforesaid case may be briefly stated as follows:

2. The original informant Nathubhai Dhonka Nayak along with his wife Revaben and the members of his family had gone to village Navagam in Himatnagar Taluka of Sabarkantha District for labour work. The respondent had engaged the informant Nathubhai and hence he was required to do labour work in the field of the respondent. The prosecution has alleged that the informant was required to go back to his native place and, therefore, he requested the respondent to settle his accounts. That at that time, the respondent got angry and with a view to bring pressure on the informant, he put his son Balu and one Kanchan in a room and locked the said room from outside. That, efforts were made to trace out those two persons but they were not traced out. Therefore, further enquiry was made and it was learnt that the said two persons were confined wrongfully by the present respondent in his house. Therefore, the respondent was requested to release them at which the respondent got irritated and started abusing the informant. Thereafter, FIR was filed and investigation was undertaken. At the close of investigation, charge-sheet was filed for the said offences. At the trial, charge was framed and the respondent pleaded not guilty to the said charge. Evidence was recorded and at the end of the trial, learned Judge found that the prosecution did not prove the offence against the respondent. Therefore, the learned Judge pronounced judgment acquitting the present respondent from the aforesaid charge.

3. Feeling aggrieved by the said judgment and acquittal order passed by the learned Addl. Sessions Judge, the State has preferred this appeal before this Court. It has been contended here that the learned Trial Judge has erred in acquitting the respondent. That the learned Judge ought to have granted more time to the prosecution to lead evidence and to serve summons on the witness and, therefore, the learned Judge ought to have granted adjournment for leading evidence when the summons were not served upon the witnesses. That therefore, the

judgment and acquittal order passed by the learned Judge are illegal and erroneous and they deserve to be set aside. It is, therefore, prayed that the present appeal be allowed and the judgment and acquittal order be set aside and at least the matter may be remanded to the trial court for trial and disposal according to law.

4. The appeal was admitted and notice was served upon the respondent. Mr L M Chhablani, learned Advocate appears on behalf of the respondent in response to the notice served upon the respondent.

5. I have heard learned APP, Mr M A Bukhari and Mr L M Chhablani for the parties. I have also gone through the papers. In fact, the learned Advocates for the parties have taken me through the materials on record including the evidence and the judgment. On going through the Records and Proceedings, it becomes clear that the prosecution has examined as many as four witnesses. Out of which Karsanbhai Kuberbhai at Exh.15 and Ashokkumar Gopalbhai at Exh.12 are the panch witnesses in whose presence panchnama with respect to the scene of offence was drawn by the Investigating police officer. These two witnesses have turned hostile and they have not supported the case of prosecution. Therefore, their evidence did not lead to any particular direction. The third witness is Kailashben Daria, Exh.14 who is the daughter of the informant. It is the case of the prosecution that the aforesaid offences were committed by respondent in her presence and the brother and cousin of this witness were wrongfully detained by the respondent in presence of the witness.

6. On going through the evidence of this witness, it transpires that this witness has also turned hostile and she has not stated that the brother and cousin were detained wrongfully by the respondent. After declaring her hostile, learned Addl. Public Prosecutor cross-examined this witness but nothing fruitful has come on records from her cross-examination. It seems that her evidence does not support the case of the prosecution. On going through the evidence of this witness, it is clear that her father and other members of the family have left the place and according to her evidence, she did not know as to the whereabouts of those persons. The judgment shows that efforts were to find out the whereabouts of Nathubhai and other members of his family. It also transpires that several adjournments were granted and more than reasonable time was given to the prosecution for service of summons on those witness. The judgment further shows that the said witnesses had gone

outside the District for labour work and their whereabouts could not be obtained by the police officers. Even police officers were deputed to trace out the whereabouts of the said witness. The certificate from the Sarpanch shows that the said witnesses had left the place and it would not be possible to say with certainty as to whether they would return to the said village. It appears that the informant and other family members did not belong to village Navagam but they had gone there for labour work. It may be that the witnesses did not have a permanent work there requiring them to stay on permanent basis. They would move from place to place and they would stay wherever labour work is available. Even daughter of Nathubhai, Kailashben specifically stated that she had no idea about the whereabouts of her father and other members of family.

7. Learned APP, Mr M A Bukhari has contended that some more time should have been granted to the prosecution to bring the witness. Even today, it is not possible for him to say that the witnesses have come back to that village or that they are traceable and available for giving evidence. In that view of the matter, when sufficient time was granted to the State for bringing the witnesses and yet when the witnesses could not be traced out and when even daughter of the informant herself did not know the whereabouts of her father and other family members, then it would mean that this being a community moving from place to place for getting labour work, the witnesses are not likely to be available even if the matter is remanded and time is granted for examination of the said witnesses. It may be that the victim may have settled the matter out of court and, therefore, they may not be willing to tender evidence before the court. Any way, it cannot be said that the trial court had not given reasonable time for tendering evidence before the Court. Sufficient time was given and even as on today, it is not certain as to where the witnesses have been staying at present. Therefore, no purpose would be served by remanding this old appeal of 1993 arising from an old S;pecial Criminal Case of 1992 back to the trial court to have fresh exercise in futility.

8. Then the last witness is Investigating Police Officer who has not seen the incident and, therefore, he was not able to say anything about the same. Hence his evidence cannot lead to the conviction of the respondent. There is no other evidence on record. In view of the above position, it is clear that the learned Judge was perfectly justified in acquitting the accused in absence of any evidence against him. The judgment and order of

the trial court, therefore, cannot be said to be illegal, erroneous and therefore, they cannot be set aside. Moreover, this is an appeal against the acquittal and, therefore, the court hearing an acquittal appeal has to be slow in interfering with judgment and acquittal order recorded by the trial court.

9. For the foregoing reasons, I find no substance and merit in this appeal and the same deserves to be dismissed. Accordingly the appeal is ordered to be dismissed. The judgment and acquittal order passed by the learned Addl.Sessions Judge are confirmed.

14.12.2001 [D P Buch, J.]

msp